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# BUSL320 Summary Notes

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## □ The Nature of Tax

- Signified in *MacCormick v FC of T (1984)* :
  - Taxes are **compulsory payments**; **NOT** optional choices
  - Taxes are raised for **public purposes**; however do **NOT** constitute a **payment for rendered services**
  - Taxes are **NOT penalties** that are enforced → as a **part of civil obligations** (Duty to pay the tax)
  - Taxes are **NOT arbitrary** → They are **NOT 'guessed'**; compulsions are **based on precise mechanisms/formulae**
  - Taxes are **NOT incontestable** → Appeals must follow certain procedures with specific objectives
- ※ **FC of T** : Federal Commissioner of Taxation (Head of the Australian Taxation Office)
- Mechanisms for enforcing the compulsion of tax
  - **Collection mechanisms** : **PAYG / ABN / TFN**
  - **Information mechanisms** for **lodgments / issuing assessments**
  - **Information mechanisms** for **post-lodgment verification**
  - **Information mechanisms** for **penalty provisions**

## □ Operational Framework of tax laws

- Classification of taxes
  - 1) **Direct Taxes** : Ability to pay principle → **The more you earn, the more you pay**; Progressive tax structure
    - 1.1) **Income Tax** : Taxes **upon profits** (**Personal income tax / Capital Gains tax / Company tax**)
      - 1.1.1) **Personal Income Tax (Federal)**
        - Taxes upon the **personal income** (salary/wages), and personal business profits (**Sole & Partnership**)
      - 1.1.2) **Capital Gains Tax (Federal)**
        - Taxes upon the **profits from acquiring/selling marketable securities & equity investments**
      - 1.1.3) **Company Tax (Federal)**
        - Taxes upon the **profits from business activities through a company structure**
    - 1.2) **Property Tax** : Taxes upon **ownership of properties outside of residential purposes (Death & Wealth)**
      - 1.2.1) **Death Duty (State)**
        - Taxes upon **inheritance of assets(properties)** → Abolished from Australia
      - 1.2.2) **Wealth Tax** : Taxes being **imposed upon the 'rich'**
        - **Luxury Car Tax (F)** : When a purchased **vehicle exceeds a specific price**  
= Threshold can be **lifted** if a vehicle is a **fuel-efficient vehicle**
        - **Foreign property buyers tax (F)** : When a **foreigner is acquiring a property** higher than specific
        - **Temporary budget repair levy (F)** : **'Temporary'** collection to the payers that make **higher income**
        - **Premium property duty (S)** : If a **property being purchased** is higher than specific
  - 2) **Indirect Tax** : **Supplementing the income tax system & Avoiding the needs to increase the tax rates**
    - 2.1) **Indirect Sales Tax** : Taxes implied upon **'every' sale transaction with specific conditions**
      - 2.1.1) **Value Added Tax (F)**
        - Sale of goods with **additional values** (i.e. Goods and Services Tax → **GST**)

2.1.2) **Stamp Duties (S)**

- Tax paid for the sales of **'documented' properties** → Sale of **non-current assets / intangible assets..**

2.1.3) **Customs/Excise duties (F)**

- Taxes upon the **goods being imported** (Customs) / Goods being **manufactured within AU** (Excise)

2.2) **Indirect Factors Tax** : Taxes being **implied upon the 'factors'** of production

2.2.1) **Fringe Benefits Tax (F)** : Tax from **non-cash benefits** as in respect of employment, upon the employer

2.2.2) **Payroll Tax (S)** : Tax from amount of **payrolls bigger than specific**, upon the employer

2.2.3) **Land Tax (S)** : Tax from owning a **real estate bigger than specific, generating income** to the owner

2.2.4) **Carbon Tax (F)** : Tax from **emission of pollution** during production activities

Direct Taxes		Indirect (Consumption) Taxes	
Income Tax	Property Tax	Sales Tax	Factors Tax
<b>Personal Income Tax (F)</b> - Sole & Partnership	<b>Death Duty (S)</b> - Inherited assets	<b>Value Added Tax (F)</b> - GST	<b>Fringe Benefits Tax (F)</b> - Employment benefits
<b>Capital Gains Tax (F)</b> - Corporate investments	<b>Wealth Tax (F/S)</b> - Luxury car(F) - Premium property(S)	<b>Stamp Duties (S)</b> - Sale of non-current assets - Sale of intangible assets	<b>Payroll Tax (S)</b> - Large payrolls
<b>Company Tax (F)</b> - Company profits		<b>Customs/excise duties (F)</b> - Imported (Customs) - Domestic (Excise)	<b>Land Tax (S)</b> Carbon Tax (F)

Table 1.1) Classification of taxes : Direct Tax & Indirect Tax

□ **Constitutional bases of Tax**

- Australian taxation framework : **Three tiered System (Federal / State / Local)**
  - 125 different 'pieces' of taxes → comprised of 99 federal / 25 state/ 1 local items
- **Jurisdictional Issue** : 'Who has the **power to collect** the money?'
  - **Constitutional law** (s 51(ii)) confirms the **primary power** to impose income tax upon **Federal Parliament**
  - However it is **NOT** an **exclusive power** (Uniform Tax Cases 1942 1<sup>st</sup> & 2<sup>nd</sup>)
  - **Conflict of jurisdiction** may result in **double taxation** → Each 'tiers' have list of tax items to collect
  - **Federal taxation MUST** be **equally implied** between the states → Discrimination is forbidden by the constitution
- **Additional taxing powers** in the constitution (**Exclusive powers** conferred by s 90)
  - **Customs and excise duties** are granted exclusively to the federal government
  - = **Ha&Anor v NSW (1997)** : Customs and excise duties implied by the **state gov't is unconstitutional**

□ **Sources of Income Tax Law (★★★)**

- Understanding the **correct&precise sources of income tax law**
  - Helps to **identify the tax consequences** of any given transaction which **depend on the sources of law**
  - Sources **embody the principles** that the **commissioner & courts apply** to resolve tax disputes

### · 3 Sources of tax law : 1) Legislation 2) Case Law 3) Tax rulings

- 1) **Legislation** : Statutory items that **explicitly** declare the **structures(boundaries) of tax laws**
  - = **Income Tax Assessment Act** (ITAA 1936; ITAA 1997)
  - = **Goods and Services Tax Act** (GSTA 1999)
  - = **Fringe Benefits Tax Assessment Act** (FBTAA 1986)
  - = **Taxation Administration Act** 1953
  - = **Rating Acts**
- 2) **Case Law** : Takes the **'retrospective' approach** towards **historical judgements** to clarify the 'grey areas'
  - = Based on **court hierarchies and precedents**; completes the British common law system
  - = 'Interprets' the legislation and **fills in the gaps** / May vary over time in **interpreting the historical cases**
- 3) **Taxation Rulings** (ATO practice)
  - = **Administrative guidelines issued by the ATO**; explaining the application/practice of tax laws
  - = An **integral part of the self-assessment** system (since FY1993); binding on the Commissioner
  - = **CANNOT override** the legislations / case laws → **NOT** part of the common law
  - = **Prospective approach** : ATO seeks to **clarify the administrative practices** that is expected to happen
  - = **Public rulings** : Applies to **any person** / **Private rulings** : Applies to **specific persons**
  - = **s359-20** : 'Making a private ruling' → Must state the **relevant scheme and provision** to which it relates

### · Liability to taxation : measuring the taxable transactions

- **ITAA36, s 21** : '**Non-cash consideration**' → Even though **consideration is not cash**; it is **deemed to be paid**
- **ITAA36, s 21A (1)** : '**Non-cash business benefits**' → Non-cash business benefits are **considered as cash**
  - = **s 21A (2)a** : Benefit shall be brought into an account into an **arm's length value**; and
  - = **s 21A (2)b** : If the benefit is not cash-convertible, **any conditions to restrict the conversion is disregarded**
  - = **s 21A (3)b** : if a taxpayer had incurred/paid an **unreimbursed expenditure to the provision** of benefit, the taxpayer is allowed for the **deductible percentage**
  - = **s 21A (5)** : Definition of **arm's length value**

## □ Tax administration : Process of information management

### · Tax administration in 4 easy steps : Lodgement – Assessment – Reviews – Audits

- 1) **Lodgment of tax administration** : "Most **important source of information**" (s 169A, ITAA 1936)
  - Almost **ALL** taxpayers **MUST** make lodgments in an '**approved form**'
  - Subjected to **time limits** (**120days** after the end of FY; increased when lodging through an agent)
  - ATO may request for **further information if an inadequate/incomplete lodgment** has been made
  - **Penalties** for **non-lodgment/amendments** → Lodgment **MUST** be made in precise (irrevocable) manner
  - **General interest charge** → Charges upon **late payment of tax**; withheld PAYG tax; underpayment of tax
- 2) **Assessment of tax administration** : "**Ascertainment of amount for taxable income & tax payable**" (s 168)
  - **ITAA36 s166** : '**Assessment**' → The **commissioner MUST make an assessment** of:
    - (a) the amount of the **taxable income**; AND
    - (b) the amount of **tax payable**; AND
    - (c) the total of the **taxpayer's offset refunds**
  - **Bona Fide and Final** (Appeals are subjected to specific procedures with certain purposes)
  - Two models of assessment → 1) **Self-assessment** 2) **Administrative-assessment**
    - 2.1) **Self Assessment** : ATO relies on **information provided by the taxpayer** – working out in payer's liability
      - = Requirement to **exercise reasonable care** → '**Assumes**' that the payer is **knowledgeable** of the process;